

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARINGS ON
ARM 12.11.805, 12.11.3205, the)	PROPOSED AMENDMENT,
adoption of NEW RULES I through V,)	ADOPTION, AND REPEAL
and the repeal of ARM 12.11.3963,)	
regarding recreational use rules in)	
Montana)	

TO: All Concerned Persons

1. On February 22, 2011 at 6:00 p.m. the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Region 1 office located at 490 North Meridian Rd., Kalispell, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

On February 23, 2011 at 6:00 p.m. the commission will hold a public hearing at the Fish, Wildlife and Parks Headquarters office located at 1420 East 6th Avenue, Helena, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

On February 23, 2011 at 6:00 p.m., the commission will hold a public hearing at the Troy Ranger Station located at 12858 U.S. Highway 2, Troy, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than February 15, 2011, to advise us of the nature of the accommodation that you need. Please contact Jessica Fitzpatrick, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; e-mail jfitzpatrick@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

12.11.805 TONGUE RIVER RESERVOIR (1) remains the same.

(2) Tongue River Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) ~~(b)~~ Tongue River Reservoir as buoyed in the marina area at Campers Point;

~~(b)~~ (a) ~~the entire Tongue River Reservoir~~ from shoreline to 300 feet from shoreline from the south point that forms Corral Creek Bay (DNRC cabin site) , north to the face of the dam, west along the dam face, and south along the west shore of the reservoir to the point where the Tongue River enters the reservoir;

~~(c)~~ (h) Rattlesnake Bay; and

~~(d)~~ (c) Campers Point Bay;
~~(e)~~ (g) Pee Wee Point Bay;
~~(f)~~ (d) Cormorant Bay;
~~(g)~~ (e) Corral Creek Bay (DNRC cabin site bay); and
(f) Neck Bay;
~~(h)~~ (i) Tongue River from the Wyoming border to the Tongue River Reservoir;
(3) remains the same.

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-106, 87-1-303, MCA

Reasonable Necessity: Tongue River Reservoir State Park is located six miles north of Decker, Montana. Boating, fishing, and other water sports are popular on this 12-mile-long reservoir. The high-use levels of motorized watercraft on Tongue River Reservoir make water safety a major concern. Currently, all bays on the west side of Tongue River Reservoir are controlled no wake speed areas, with the exception of Neck Bay which is no wake from shoreline to 300 feet from shoreline. Due to the geographic design of Neck Bay, at full pool and through the drawdown of the reservoir during irrigation, the 300-foot boundaries change and are often unclear as to where the rule is in effect. The commission is proposing restricting Neck Bay to a no wake zone to be consistent with the other bays on the western side of Tongue River Reservoir and eliminating the confusion regarding the constantly changing 300-foot boundary from shore.

12.11.3205 HAUSER RESERVOIR (1) and (2) remain the same.
~~(3) The upper end of Hauser Reservoir from Canyon Ferry Dam to below Brown's Gulch is either closed as posted or marked by barrel booms to the use of all watercraft, during the time period beginning October 15 and ending December 15 of each year.~~

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-106, 87-1-303, MCA

Reasonable Necessity: In September 1995, the commission amended Administrative Rule of Montana (ARM) 12.6.801 (which was transferred to ARM 12.11.3205 in 2001) closing to the use of all watercraft from Canyon Ferry Dam to below Brown's Gulch from October 15 and ending December 15. The commission adopted this closure in order to protect a large concentration of migrating bald eagles that used this section of the reservoir to feed on kokanee salmon carcasses. Bald eagles no longer migrate to this portion of the reservoir making the rule no longer necessary.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I FLATHEAD RIVER (1) A portion of the Flathead River is located in Flathead County.

- (2) Church Slough is:
 - (a) closed to boating March 1 to April 10; and
 - (b) restricted to a controlled no wake speed, as defined in ARM 12.11.101(1) from April 11 to the last day of February.
- (3) Fennon Slough is restricted to a controlled no wake speed, as defined in ARM 12.11.101(1).
- (4) The North Fork of the Flathead River:
 - (a) is closed to all motorboats from the Canadian border to the Camas Bridge; and
 - (b) is closed to all motorboats with motors greater than 10 horsepower from Camas Bridge to the confluence of the Middle Fork of the Flathead River.
- (5) The Middle Fork of the Flathead River:
 - (a) is closed to all motorboats from the Bob Marshall Wilderness boundary to the Highway 2 Bridge at Essex; and
 - (b) is closed to all motorboats with motors greater than 10 horsepower from the Highway 2 Bridge at Essex to the confluence of the South Fork of the Flathead River.
- (6) The South Fork of the Flathead River:
 - (a) is closed to all motorboats from Spotted Bear Footbridge to the Bob Marshall Wilderness boundary; and
 - (b) is closed to all motorboats with motors greater than 10 horsepower from Spotted Bear foot bridge to Hungry Horse Reservoir at full pool (3850 feet elevation).

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-106, 87-1-303, MCA

Reasonable Necessity: The commission is proposing language restricting Church Slough in response to a petition filed by Flathead Wildlife, Inc. to close the entire Church Slough to boating from March 1 to April 10 to protect migrating waterfowl and to make the slough no wake from April 11 through Feb. 28 to decrease bank erosion and boating hazards and to put all boaters on an equal basis.

The commission is proposing language restricting Fennon Slough in response to a petition filed by private landowners requesting wake restrictions on Fennon Slough to address concerns regarding accelerated bank erosion due to increased usage of motorboats in the area.

The U.S. Forest Service has adopted regulations restricting motorboats on portions of the North Fork, Middle Fork, and South Fork of the Flathead River. Currently, department wardens cannot enforce the rules. The commission is proposing adoption of the U.S. Forest Service restrictions so wardens can enforce them and help resolve complaints.

The commission is holding public hearings on the petitions in order to develop a record and to allow the petitioners and interested persons to present their views.

NEW RULE II ALVORD LAKE (1) Alvord Lake is located in Lincoln County.
(2) Alvord Lake is limited to a controlled no wake speed as defined in ARM 12.11.101.

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-106, 87-1-303, MCA

NEW RULE III KILBRENNAN LAKE (1) Kilbrennan Lake is located in Lincoln County.

(2) Kilbrennan Lake is limited to a controlled no wake speed as defined in ARM 12.11.101.

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-106, 87-1-303, MCA

Reasonable Necessity: The commission is proposing language restricting Alvord Lake and Kilbrennan Lake in response to a petition filed the U.S. Forest Service and Lincoln County Commissioners requesting wake restrictions on Alvord Lake and Kilbrennan Lake to address recent complaints by the majority of the recreational users of the lakes.

The commission is holding public hearings on the petition in order to develop a record and to allow the petitioners and interested persons to present their views.

NEW RULE IV BRUSH LAKE (1) Brush Lake is located in Sheridan County.
(2) Brush Lake is limited to a controlled no wake speed as defined in ARM 12.11.101 surrounding the Brush Lake State Park boat ramp, dock, and swimming area as buoyed.

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-106, 87-1-303, MCA

Reasonable Necessity: In 2006, Brush Lake State Park was established, and a day-use area was developed at the north end of the lake. A campground is to be constructed in the summer of 2011. The park's day-use and picnic area includes a boat ramp, dock, and an approximately 100-foot by 9-foot swimming area. As anticipated, with the presence of the concrete boat ramp and a quality dock, the amount of motorized boat traffic noticeably increased, causing periodic congestion in the area of the ramp, dock, and swimming area. The commission is proposing the restrictions on Brush Lake to address the unsafe environment caused by the concentration of watercraft and swimmers on the water in the vicinity of the park's day-use area.

NEW RULE V PLACEMENT OF WATER OBSTACLES (1) A water obstacle includes but is not limited to:

- (a) pier;
- (b) floating dock;
- (c) platform;
- (d) shoreline dock greater than 75 feet from shoreline;
- (e) navigational aid;
- (f) slalom course;

- (g) jump/rail; and
- (h) inflatable recreational equipment located greater than 75 feet from shoreline.

(2) No person shall place any permanent or anchored water obstacle on the waters of this state without a permit issued by the department or a federal, state, or county entity with authority. Water obstacles that are permitted by a federal, state, or county entity with authority are not required to obtain an additional permit from the department.

(3) All permitted water obstacles must be visibly marked with the owner's name with letters that are:

- (a) a contrasting color to the object; and
- (b) at least three inches in height with the letter width proportionate to the height.

(4) Each permitted water obstacle must be marked with lights if placed overnight and the marker lights:

- (a) must meet United States Coast Guard requirements for marker lights;
- (b) must float at least 39 inches above the water;
- (c) must be an amber color flashing light that flashes a minimum of 30 flashes per minute and is visible for up to one-half mile; and
- (d) if buoyed, the buoy must be self-righting and have a three-inch silver radar reflective band around the top.

(5) Placement of water obstacles without a proper permit or failure to abide the permit requirements constitutes a violation of commission rules and regulations and the water obstacles must be removed by the entity that placed the obstacle immediately upon notification. Water obstacles that create a hazard may be removed by the department at the owner's expense. Any damages incurred during removal by the department will not be the responsibility of the department.

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 23-2-525, 87-1-303, MCA

Reasonable Necessity: Section 23-2-525, MCA, states "A person may not anchor a vessel or other obstacle for fishing or pleasure purposes on any body of water over which the state has jurisdiction in a position that obstructs a passageway ordinarily used by other vessels." This statute is vague and leaves plenty of room for interpretation of what is a passageway. Montana has seen an increase in people placing objects on state waters that may create a hazard to other recreational boaters, specifically the placement of slalom courses in western Montana waters. Other western states are seeing an increase for requests for putting up jumps and rails. The commission is proposing limited restrictions on the placement of obstacles on state waters to prevent water obstructions creating safety hazards and limited recreation.

5. The rule proposed to be repealed is as follows:

12.11.3963 MILLTOWN DAM

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-106, 87-1-303, MCA

Reasonable Necessity: In November 2003, the commission adopted ARM 12.11.3963 restricting boating, sailing, floating and swimming 200 feet above the dam and 200 feet below the dam. Milltown Dam was removed in March 2008 making ARM 12.11.3963 obsolete.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jessica Fitzpatrick, Fish, Wildlife and Parks, 1420 East 6th Avenue, P.O. Box 200701, Helena, MT 59624-0701; fax (406) 444-7456; e-mail jfitzpatrick@mt.gov, and must be received no later than March 4, 2011.

7. Jessica Fitzpatrick or another hearing officer appointed by the department has been designated to preside over and conduct the hearings.

8. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the commission or department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Bob Ream
Bob Ream, Chairman
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State January 18, 2011